

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Acceleration of)	WC Docket No. 11-59
Broadband Deployment: Expanding the)	
Reach and Reducing the Cost of)	
Broadband Deployment by Improving)	
Policies Regarding Public Rights of Way)	
and Wireless Facilities Siting)	

**CITY OF RENTON, WASHINGTON: COMMENTS ON THE FCC's BROADBAND
AND RIGHTS OF WAY NOI**

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Summary of the City’s Comments

The City makes four main points in these Comments: 1) The Commission does not have jurisdiction to preempt local rights-of-way regulations; 2) There is no evidence that local government regulation has negatively impacted broadband deployment; 3) Rather than attack local government regulations, the Commission should address the real “barrier” to broadband deployment, which is the inability of providers to economically deploy broadband to certain low density areas of the country; and 4) the Commission should consider the City’s “Top 5” list to encourage additional competition. The Top 5 list includes coordinating local, state, and federal government actions, better identification of broadband facilities located in the public rights-of-way, encouraging the deployment of spare conduit, and simplifying the cost recovery process for rights-of-way construction.

I. Introduction

The City of Renton, Washington (the “City”) is the ninth largest city in the State of Washington¹ with a population of 92,590. The City is located on the South end of Lake Washington in King County, approximately eleven miles from the City of Seattle. It is also subject to broadband competition from multiple broadband providers. The City is submitting comments in this matter, because it believes the Commission is exceeding its jurisdiction and it believes the Commission is failing to recognize that the biggest obstacle to broadband deployment is the cost of constructing to and serving low density population areas. The City has also suggested in these comments a “Top 5” list for the Commission to consider for increasing broadband deployment and competition within the broadband industry.

II. The Commission Does Not Have Jurisdiction to Preempt Local Regulations.

The City supports and adopts by reference the comments submitted by the National League of Cities *et al.* and the Coalition of Texas Cities concerning the Commission’s limited or lack of jurisdiction concerning local rights-of-way regulations and compensation. This proceeding would appear to be a solution in search of a non-existent problem. As you will see below, the real issue affecting broadband deployment is the economics of constructing to and serving low population density areas. Local government regulations and compensation, on the other hand, have no negative impact on broadband deployment.

¹ See City of Renton web page. <http://rentonwa.gov/>

III. There is No Evidence that Local Government Regulation Negatively Impacts Broadband Deployment.

The premise that local governments are hindering broadband deployment is without any foundation whatsoever. None of the broadband studies in the state of Washington have identified a single instance of a local government slowing or limiting broadband deployment. Interestingly, the only government agencies that were identified as a hindrance to broadband development in the State of Washington were the U.S. Fish and Wildlife Service for approving river crossings, and the Department of Natural Resources, requiring lengthy approvals for construction through areas such as state forest lands.²

The attention being spent by the Commission on local government regulations is misplaced. Local government regulations have had no negative impact on broadband deployment.³ The City, for example, has never delayed or denied an application for a permit to provide broadband services and the City has taken efforts to encourage other providers to compete in the broadband market.⁴ Like other high density urban areas in the state of Washington, the City has 100% or near 100% coverage and is served by four or more wireline providers.⁵ City residents and businesses have access to broadband speeds up to at least 50

² See Washington Utilities and Transportation Commission, Broadband Study Report, at 189 (June 27, 2008) (hereafter the “WUTC Report”) (companies considerable difficulty obtaining permits for network development in areas that are “environmentally sensitive.” Railroad crossings were identified as another lengthy and expensive process).

[http://www.wutc.wa.gov/webimage.nsf/0/0c107f2aecec013a8825733800684fcf/\\$FILE/80061182.pdf/Final%20Report%20on%20the%20Broadband%20Study%20\(6-28-08\)PDF.pdf](http://www.wutc.wa.gov/webimage.nsf/0/0c107f2aecec013a8825733800684fcf/$FILE/80061182.pdf/Final%20Report%20on%20the%20Broadband%20Study%20(6-28-08)PDF.pdf)

³ The City’s Telecommunications Ordinance can be found at Renton Municipal Code 5-19-1. See <http://www.codepublishing.com/wa/renton/>

⁴ For example, the City encouraged Google to build in the City. See “Renton wants help going after Google’s fiber optic network”, RentonReporter.com, http://www.pnwlocalnews.com/south_king/ren/news/87497037.html

⁵ See Map of Washington State Population Density 2009, http://wabroadbandmapping.org/PDF/Statewide/Population_Density_2009.pdf; Map of Washington State Number of Wireline Broadband Providers, http://wabroadbandmapping.org/PDF/Statewide/WABroadband_NumberofWirelineProviders.pdf.

mbps.⁶ All of the evidence shows that where there are high density population centers, there is nearly 100% broadband deployment and availability, regardless of local government regulations.⁷

IV. The “Barrier” to Broadband Deployment is the Economics of Serving Low Density Areas - Not Local Government Regulations.

It should come as no surprise that where there is high density population there is broadband deployment. In contrast, where there is remote low density population, there is less (or no) broadband deployment. There is of course a correlation. Where there is high population density, there is high broadband deployment, both wireline and wireless, because providers are able to develop plausible business plans anticipating an acceptable return on their investment. Where there is low population density, there is less (and in some cases no) broadband deployment, because a business case for construction of broadband facilities to these typically remote rural locations cannot be made.

The Washington State Broadband Program Office recently released a report recognizing that high density populated areas in Washington, like the City, “have affordable access to all commercially-available broadband speeds.”⁸ In fact, 90 percent of total households in Washington have broadband access of some type.⁹ The under-served or un-served areas are in

⁶ See Map of Washington Broadband Speeds.
<http://wabroadbandmapping.org/InteractiveMap/WAInteractiveMap.aspx>

⁷ Map of Washington State Areas that meet NTIA Definition of Broadband (greater than or equal to 768 kbps download speed, and 200 kbps upload speed),
http://wabroadbandmapping.org/PDF/Statewide/WABroadband_NTIADefnBB.pdf
Map of Washington State Number of Wireline Broadband Providers,
http://wabroadbandmapping.org/PDF/Statewide/WABroadband_NumberofWirelineProviders.pdf

Map of Washington State Population Density 2009,
http://wabroadbandmapping.org/PDF/Statewide/Population_Density_2009.pdf

⁸ Washington State Broadband Program Office, “Creating Opportunities: A Report on Broadband in Washington State”, at 2 (hereafter “WSBPO Report”).

<http://broadband.wa.gov/sites/default/files/docs/WashingtonStateBroadbandReport.pdf>

⁹ WSBPO Report, at 2.

the low population density areas. “In short, supply meets demand in the highly populated areas of Washington, but not the less populated areas.”¹⁰

It is not difficult to understand why companies choose to invest in communities with high population densities. They make money in these areas. As a major Washington broadband provider reported to the Washington Utilities and Transportation Commission, “broadband deployment is based on economic analyses that evaluate return on investment. Taken into account are existing network design, capacity, population density and competition.”¹¹ Local government regulation has no role in the decision on whether to deploy broadband, rather according to another major provider the “obstacles to deployment may include high capital and operating costs compared to likely revenue.”¹²

All of the Washington State agencies that have studied broadband deployment have all reached the same conclusion. High density areas are served, while low density areas may not be served. As the Washington Utilities and Transportation Commission observed:

“Essentially, even if a high percentage of the [rural] population wanted to subscribe to broadband, in many rural areas there is simply not sufficient demand (i.e. revenue potential) for the service to justify the level of private investment needed for deployment. This remains a hard reality without either technological changes that reduce costs substantially or substantial subsidies from government or foundation sources, like the mechanisms used historically to promote the universal availability of wireline telephone service.”¹³

Likewise, the Washington State Broadband Program Office confirmed that “unserved areas are high cost areas,”¹⁴ noting that “[p]roviders are reluctant to make the investment in [low density] areas without broadband because they don’t see people demonstrating that they will use it at a

¹⁰ *Id.*

¹¹ See WUTC Report at 135, quoting Qwest (now CenturyLink).

¹² See WUTC Report at 190.

¹³ *Id.* at 135.

¹⁴ See WSBPO Report at 28.

sufficiently high level to justify the cost of investment.”¹⁵ The national broadband studies all arrive at similar conclusions; namely, that lagging broadband deployment is “one that predominantly exists outside of urban areas.”¹⁶ For example, the National Broadband Plan states the “broadband availability gap is greatest in areas with low population density.”¹⁷ The Seventh Broadband Progress Report agreed, reporting that in areas of low population density, “deployment is often uneconomical, as the costs to build a network exceed potential revenues.”¹⁸

Thus, when it comes to fostering ubiquitous broadband, the issue in Washington is the same as it is across the country; how should people in low density areas be served when it is uneconomical for a company to deploy broadband services to the area? Local government regulation is not limiting broadband deployment. The Commission should look at cooperating with state and local agencies to develop strategies designed to foster broadband deployment in low density areas, rather than attempting to blame local governments for hindering the growth of broadband deployment when all of the studies show the real obstacle is the inability of private providers to economically construct broadband facilities to low density areas of the state and country.

V. “Top 5” Ways to Encourage Competition in Broadband.

As mentioned above, the City has never slowed or denied an application by a provider to provide broadband in the City. The City would be supportive of additional entrants into the broadband market in the City, however the City recognizes there are significant economic challenges associated with overbuilding and competing against an existing provider. If the

¹⁵ See WSBPO Report, at 25.

¹⁶ See Omnibus Broadband Initiative, The Broadband Availability Gap (OBI Technical Paper No. 1, April 2010), statistics in Exhibit 2-E, at 20 (hereafter the “OBI Report”). <http://download.broadband.gov/plan/the-broadband-availability-gap-obi-technical-paper-no-1.pdf>

¹⁷ See Omnibus Broadband Initiative, FCC, Connecting America: The National Broadband Plan, Chapt. 8, at 136 (hereafter the “NBP”); see also, OBI Report, Section III – Calculating the Investment Gap, at 33.

¹⁸ See Seventh Broadband Progress Report and Order on Reconsideration, FCC 11-78, at ¶ 66.

Commission seeks additional broadband competitors, the City has developed a “Top 5” list that it believes may help encourage competition.

1. Coordination of Governmental Broadband Efforts

The deployment of broadband is a concept that is essentially universally supported at the local, state and federal levels of government, resulting in multiple efforts at each level of government. Good efficient governance would seem to require (or at least attempt) coordination of these efforts. For example, in today’s electronic age, it makes little economic sense to have multiple mapping efforts. The Commission seemed to be of the same opinion when it released its National Broadband Plan that recommended the creation of a local task force.¹⁹ The City recommends that broadband deployment efforts be coordinated.

2. Require Full Disclosure and Mapping of Existing Infrastructure.

All levels of government have difficulty ascertaining existing infrastructure in the public rights-of-way. We suggest requiring the industry to provide better inventory of fiber facilities in the rights-of-way. It is believed that there is a tremendous amount of unused fiber in the rights-of-way, but governmental entities have little or no way of understanding where those stranded assets are located. Identifying stranded assets could help promote service to underserved or unserved areas and additional competition to areas already served.

The Washington Utilities and Transportation Commission identified this issue, reporting that “providers are very reluctant to provide existing infrastructure information – or even deployment information – based on their characterization of such information as proprietary and confidential.”²⁰ Without accurate existing infrastructure data, the State of Washington has

¹⁹ See NBP, Recommendation 6.6, Chapt. 6, at 113.

²⁰ See WUTC Report, at 195.

recognized that it “may not be able to completely develop detailed and targeted investment incentives or service deployment options for particular areas.”²¹ Similarly, the Washington State Broadband Program Office reported there is unmapped fiber because it “does not have the authority to obtain data from all provider entities deploying fiber or the location of dark fiber that remain unused. Therefore, the amount of fiber available in Washington may be underreported.”²²

Having access to accurate infrastructure information and developing rules requiring providers to lease facilities to competitors under certain conditions could foster broadband in both high density and low density areas. If governmental entities remain in the dark, unused fiber will be left dark and opportunities to encourage competition will be lost.

3. Conduit Installation for Future Need and Competition

Encouraging the installation of spare conduit could have the double effect of increasing broadband competition and limiting street cuts. We suggest the development of guidelines and incentives for the installation of spare conduit and for latecomer agreements and cost sharing arrangements to encourage the shared use of new conduit for future competing providers. The results should reduce the number of pavement cuts and reduce the overall costs of deploying multiple sources for broadband deployment.

4. Simplified Cost Recovery and Reserves for Future Construction

Many cities have difficulty fully recovering the costs of construction in the rights-of-way. Construction in the rights-of-way results in the City incurring a myriad of immediate costs, but it also has longer-term costs, such as the “wear and tear” on pavement, causing roads to degrade faster than they otherwise would. While the City’s charges and fees are based on a policy of

²¹ *Id.*

²² *See* WSBPO Report, at 30.

cost-recovery, the City has not been able to develop an economical and acceptable manner of fully recovering pavement restoration costs for trenching in paved areas. The City would recommend a simplified method of recovering its costs that is fair to both the City and providers doing business in the City.

Recognizing that there may be areas of cities where it is uneconomical to serve or enhance service, the City would also support having the ability to reserve permitting funds to fund future construction to unserved or underserved areas, including business parks etc. We know there are areas of cities that companies can't make a business case for constructing fiber. This would give cities the opportunity to do something like the City of Seattle is doing in Pioneer Square.²³

5. Eliminate Leasing Discrepancy

We also note the discrepancy between lease costs for wireless facilities, such as cabinet boxes and towers on private property versus the lack of comparable costs and obligations for use of similar property in public rights-of-way. We would recommend eliminating the discrepancy and allow cities to charge comparable lease type fees for use of the public rights-of-way.

VI. Conclusion

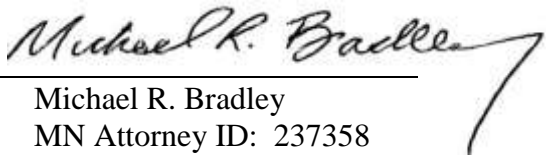
The Commission does not have jurisdiction to preempt local government rights-of-way regulations. Even if it did, there is no evidence that local government regulations are acting as any type of “barrier” to broadband deployment. To the contrary, all of the studies on broadband deployment recognize that while high density areas are nearly 100% served, low density areas are not, because private companies cannot make economical business plans to construct broadband facilities to these locations. The Commission should tackle this true “barrier” to broadband deployment. The Commission should also examine the City’s “Top 5” which the

²³ See “Comcast wins high-speed broadband contract for Seattle’s Pioneer Square”, Geekwire.com, <http://www.geekwire.com/2011/comcast-wins-highspeed-broadband-contract-seattles-pioneer-square>

City believes would facilitate future broadband deployment and competition, while allowing local governments to best manage their public rights-of-way.

Respectfully submitted,

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